

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 042141	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____	Application Number 10/802,794		Filed March 18, 2004
	First Named Inventor Satoshi MIYAJI		
	Art Unit 2416	Examiner Kan Yuen	

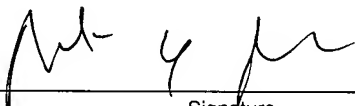
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)
- ☒ attorney or agent of record. 59,274
Registration number _____
- ☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____



Signature
Robert Y. Raheja

Typed or printed name
202-822-1100

Telephone number
April 8, 2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of: **Satoshi MIYAJI et al.**

Art Unit: **2416**

Application Number: **10/802,794**

Examiner: **Kan Yuen**

Filed: **March 18, 2004**

Confirmation Number: **4593**

For: **MOVING PICTURE COMPRESSION ENCODING TRANSCEIVER
APPARATUS**

Attorney Docket Number: **042141**

Customer Number: **38834**

PRE-APPEAL BRIEF – REQUEST FOR REVIEW

Mail Stop: AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

April 8, 2009

Sir:

This request is being filed concurrent with a Notice of Appeal in compliance with 37 C.F.R. §41.31. Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this Request.

REMARKS

Claims 1-8 are currently pending in the application. Claims 1 and 2 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kikuchi, in view of Uemura and further in view of Bonomi. Dependent claims 3-8 also stand rejected as set forth in Final Office Action.

Applicants respectfully submit that the Examiner has made a clear error in asserting that the combination of Kikuchi, Uemura and Bonomi discloses the limitations of independent claim 1 as set forth in the Final Office Action dated December 10, 2008. Furthermore, the Examiner has also made a clear legal error in applying the law of *In re Keller* case to the claimed invention as set forth in the Advisory Action dated March 24, 2009.

Claim Rejections - 35 U.S.C. §103

Claim 1 is drawn to ... *a transmission bit rate estimation means for estimating a transmission bit rate which is being altered step by step, said estimation means estimating the instantaneous transmission bit rate on the basis of round-trip delay time for a sender report packet and a receiver report packet each having a small size and round-trip delay time for a sender report packet and a receiver report packet each having a large size.*

For example, as noted on pages 13-14 of the present specification, a transmission bit rate estimation means (4, Fig. 1) for estimating a transmission bit rate (R_s , R_r) which is being altered step by step (9.6 kbps, 19.2 kbps, 38.4 kbps, 76.8 kbps and 153.6 kbps, page 3), the estimation means estimating the instantaneous transmission bit rate (R_s , R_r) on the basis of round-trip delay time (D_s , D_l) for a sender report packet and a receiver report packet each having a small size (S_{ss} , S_{rs}) and round-trip delay time (D_s , D_l) for a sender report packet and a receiver report packet each having a large size (S_{sl} , S_{rl}) wherein: R_s = bit rate in sending direction, R_r =bit rate in the receiving direction, D_s = the round-trip delay time of the small report packet, D_l = the round-trip delay time of the large report packet, S_{ss} = size of the sender small report packet, S_{rs} = size of the receiver small report packet, S_{sl} = size of the sender large report packet, and S_{rl} = size of the receiver large report packet. The above parameters are related in the form of the dual linear simultaneous equations (1) and (2) as noted on page 14 of the present specification. In the dual linear simultaneous equations (1) and (2), S_{ss} , S_{sl} , S_{rs} and S_{rl} are fixed values. T_{ss} , T_{sl} , D_{rs} and D_{rl} are contained in the receiver report packet, and T_{rs} and T_{rl} are values that can be known in the sender side apparatus. By solving the dual linear simultaneous equations with these values, therefore, the bit rate R_s in the sending direction and the bit rate R_r in the receiving direction, i.e., transmission bit rate can be calculated uniquely.

On page 4, item 8 of the Final Office Action, it is acknowledged that Kikuchi does not teach “a transmission bit rate estimation means for estimating transmission bit rate on the basis of round-trip delay time for a sender report packet and a receiver report packet each having a small size and round-trip delay time for a sender report packet and a receiver report packet each having a large size.” Also, on page 2 of the subsequent Advisory Action, it is further reiterated that “[t]he examiner introduced the first reference "Kikuchi et al." for teaching the method of sending two [different] [size] of control packets, and determining the round-trip delay time of the two packets.” More specifically, in Kikuchi, based on the round trip times of the two control packets, the coefficient estimating unit 135 estimates a coefficient relating to a factor which varies according to the size of the transmitted packet, in the predetermined delay model signifying data transmission between the branching node 103 and the client 101, and inputs it as a part of the parameter (column 8, lines 50-63).

Hence, Kikuchi does not teach the estimation means that can estimate the instantaneous transmission bit rate (R_s , R_r) on the basis of (1) round-trip delay time (D_s , D_l) for a sender report packet and a receiver report packet each having a small size (S_{ss} , S_{rs}), and (2) round-trip delay time (D_s , D_l) for a sender report packet and a receiver report packet each having a large size (S_{sl} , S_{rl}). Therefore, it is respectfully submitted that Kikuchi does not disclose the estimation means as recited in claim 1.

Nonetheless, on pages 4-5 of the Final Office Action, it is alleged that Uemura teaches the transmission bit rate estimation means as recited in claim 1.

However, it is respectfully submitted that the Examiner is mischaracterizing the features of Uemura. Specifically, in Uemura, the line controller 302 dynamically determines a transmission rate of the line by measuring a round-trip time between the line controller 302 and the line controller 202. However, it should be noted that, in Uemura, the round trip time is based

on the round trip time of the measuring data which the server (103, Fig. 1) transmits to client 200 (column 7, lines 45-65).

In other words, there is no teaching in Uemura to suggest that the server sends measuring data of two different kinds or sizes for calculating the transmission rate. As such, Uemura is necessarily devoid of the transmission bit rate estimation means as recited in claim 1 because, in the claimed invention, the transmission bit rate estimation means can determine the instantaneous transmission bit rate on the basis of round-trip delay time for a small size sender report packet and a small size receiver report packet as well as the round-trip delay time for a large size sender report packet and a large size receiver report packet.

The reason for using two different size packet is because by sending a small report packet in packet sending sequence, it significantly reduces the time over which a large report packet stays in the sending buffer thereby sufficiently reducing the error in calculating the round trip delay which gives much more accurate estimation of the transmission bit rate as shown in Figs. 7 and 8.

Therefore, it is respectfully submitted that because Kikuchi, Uemura and Bonomi alone or in combination fail to disclose *a transmission bit rate estimation means* as recited in claim 1. Accordingly, it is requested that the rejection under 35 U.S.C. 103 be withdrawn.

In addition, the Examiner has made a clear legal error by misapplying the law from *In Re Keller* to the claimed invention (see Advisory Action). In *In re Keller*, Appellant argued that because Walsh does not relate to a cardiac pacer (Walsh taught stimulator used in conjunction with an Oscilloscope), the teachings of Walsh can not be properly combined with those of Keller or Berkovits references. That is, the appellant was arguing that because Walsh does not relate to a cardiac pacer, it was not proper for the Examiner to suggest that Walsh's equivalent digital timer can be substituted for the analog R-C timing means in Keller and Berkovits. In other words,

Application No.: 10/802,794
Art Unit: 2416

Pre-Appeal Brief
Attorney Docket No.: 042141

Appellant was trying to have the Walsh reference thrown out as a non analogous art by attacking it individually.

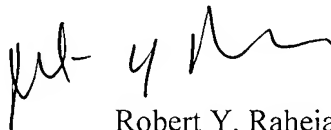
In contrast, as noted above and in previously submitted Response to the Final Office Action, Applicants heretofore have submitted that neither Kikuchi nor Uemura teaches the transmission bit rate estimation means as recited in claim 1. Further, the Bonomi reference does not remedy this deficit.

In other words, because the Kikuchi, Uemura and Bonomi references do not teach or suggest all of the claimed elements and limitations as recited in claim 1, a person of ordinary skill in the art would not make the combination suggested by the Examiner as obvious and the resulting combination would not yield the invention in claims 1-8.

If there are any fees due in connection with the filing of this paper, please charge Deposit Account No. 50-2866.

Respectfully submitted,

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP

A handwritten signature in black ink, appearing to read 'R. Y. Raheja', with a stylized flourish at the end.

Robert Y. Raheja
Attorney for Applicants
Registration No. 59,274
Telephone: (202) 822-1100
Facsimile: (202) 822-1111

RYR/bam